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SEP 10 2002

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In re Application of: Paul C. Leung et al.)	
Application No. 09/286,678)	DECISION ON PETITION TO
Filed: April 2, 1999)	RECONSIDER A DECISION DENYING
For PLATFORM-TRANSPARENT)	A REQUEST UNDER 37 C.F.R. 1.181
REGISTRATION AND BUILD OF)	FOR WITHDRAWING A HOLDING OF
STORED PROCEDURES AND)	ABANDONMENT
USER-DEFINED FUNCTIONS)	

This is a decision on the petition filed July 30, 2002 requesting reconsideration of the decision mailed July 8, 2002 denying an earlier petition to withdraw the holding of abandonment.

The application was held abandoned for failure to timely file a proper reply to the Notice of Non-Responsive Amendment. A Notice of Abandonment was mailed on April 26, 2002. A petition requesting withdrawal of the holding of abandonment was filed May 24, 2002. On July 8, 2002 a Decision denying the request was rendered. On July 30, 2002, a subsequent petition requesting reconsideration of the July 8th decision was filed.

The petition is GRANTED.

Petitioner alleges that the finality of the action mailed March 14 2002 was withdrawn in a telephonic interview with Examiner Choules held on September 12, 2001, two days before the end of the six month period. In addition, Petitioner directs attention to a copy of an Office Action faxed to Petitioner on September 13, 2001, one day before the end of the sixth month period.

While interview held on September 12, 2001 is not of record in the instant application, the copy of the fax provided by Petitioner provides ample evidence that the finality of the action was withdrawn prior to the end of the sixth month period. Therefore while it is true that the practice under 37 CFR 1.135(c) of giving Applicant a time period to supply a bona fide reply does not apply after a final Office Action, this limitation is not applicable to a situation in which the finality of the previous action was withdrawn. Thus, the action mailed September 17, 2001 was valid.

MPEP 714.03 states that "If a new time period for reply is set pursuant to 37 CFR 1.135 (c), applicant must supply the omission within this new time period for reply ...in order to avoid abandonment of the application. The applicant, however, may file a continuing application during this period (in addition or as an alternative to supplying the omission and may also file any further reply as permitted under 37 CFR 1.111". In the response filed September 27, 2001, Petitioner supplied the omissions detailed in the Notice of Non-Responsive Amendment mailed September 17, 2001. The additional amendments do not render the response improper if the response does in fact correct any alleged deficiencies. The additional amendments qualify as further replies permitted under 37 CFR 1.111. Thus, this response filed September 27, 2001 is proper and should be entered.



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On May 24, 2002, Petitioner submits a second amendment under 37 CFR 1.116. However, this submission cannot be considered a timely response to the Notice of Non-Responsive Amendment mailed September 17, 2001 as it falls well outside the six month period for statutory period for reply.

CONCLUSION

Petitioner has established that the submission filed on September 27, 2001 was both a timely and proper response to the Notice of Non-Responsive Amendment mailed September 17, 2001. Thus, the holding of abandonment of this application is hereby withdrawn. However, the amendment submitted May 24, 2002 is not timely as it falls outside of the statutory period for the September 17, 2001 mailing and will not be entered.

Accordingly, the petition for Withdrawal of Holding of Abandonment is GRANTED and the application will be forwarded to the examiner for appropriate action.

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